

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM E. SINGLETON	:	CIVIL ACTION
	:	
v.	:	
	:	
HGO, SERVICES INC., <u>et. al.</u>	:	NO. 00-2414

MEMORANDUM AND ORDER

HUTTON, J.

November 15, 2001

Presently before the Court are Defendant HGO, Inc.'s Motion for Summary Judgment and accompanying Memorandum of Law (Docket No. 15), Plaintiff's Answer to Defendant HGO, Inc.'s Motion for Summary Judgment (Docket No. 18), HGO, Inc.'s Reply Memorandum of Law in Support of Its Motion for Summary Judgment (Docket No. 20), Defendant Pennsylvania Convention Center Authority's Motion for Summary Judgment and accompanying Memorandum of Law (Docket No. 16), and Plaintiff's Response to Defendant Pennsylvania Convention Center Authority's Motion for Summary Judgment (Docket No. 17). After full consideration of the arguments, Defendant Pennsylvania Convention Center Authority's Motion for Summary Judgment is **GRANTED IN PART; DENIED IN PART**, and Defendant HGO, Inc.'s Motion for Summary Judgment is **DENIED**.

I. BACKGROUND

Plaintiff, William E. Singleton ("Plaintiff"), was employed by Defendant HGO, Inc.¹ ("HGO") in February of 1997 to perform housekeeping and set-up services at the Pennsylvania Convention Center ("PCC"). HGO provides janitorial services at the PCC pursuant to a contract with the Center's owner and operator, the Pennsylvania Convention Center Authority ("PCCA"). On October 12, 1998, HGO terminated Plaintiff after two security guards accused Plaintiff of attempting to remove an exhibitor's box from the PCC without authorization on October 10, 1998. Plaintiff denied that he attempted to steal the exhibitor's property. Subsequently, PCCA barred Plaintiff from the Convention Center, and HGO, in turn, terminated his employment.

On December 4, 1998, Plaintiff filed a grievance through his Union, Laborers Local 332, against HGO concerning his termination. Pursuant to the terms of the collective bargaining agreement, a binding arbitration was held on October 26, 1999. Plaintiff's grievance was deemed arbitrable, and Plaintiff was ordered returned to his position and was awarded back pay. No appeal was taken from this decision. On May 10, 2000, Plaintiff filed the instant action against HGO and PCCA alleging that his termination was in violation of 42 U.S.C. § 1981 (Count I) and the

¹ HGO contends that it has been wrongfully identified in the complaint as "HGO Services, Inc.," when its proper title is "HGO, Inc." See Def. HGO's Mot. for Summ. J. at 1. Accordingly, the Court will refer to Defendant as HGO, Inc. in this Memorandum and Order.

Pennsylvania Human Relations Act ("PHRA") (Count II), 43 P.S. § 951 et seq.² Defendants now move for summary judgment on all claims.

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. Celotex Corp. v. Catrett, 477 U.S. 317, 323, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986). Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). A fact is "material" only if it might affect the outcome of the suit under applicable rule of law. Id.

When deciding a motion for summary judgment, a court must

² Plaintiff also states a claim for intentional interference with contractual relations (Count III). In an Order dated November 1, 2000, this Court clarified that Count III is alleged only against Defendant PCCA, and not HGO.

draw all reasonable inferences in the light most favorable to the nonmovant. Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912, 113 S.Ct. 1262, 122 L.Ed.2d 659 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. Id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992).

III. DISCUSSION

Defendants PCCA and HGO now move this Court for summary judgment on Plaintiff's claims under both section 1981³ and the PHRA⁴ (Counts I and II respectively). PCCA also moves for Summary

³ Under section 1981, all persons are protected against race discrimination in making and enforcing of contracts. 42 U.S.C. § 1981(b). Section 1981 states that "[a]ll persons . . . shall have the same right . . . to make and enforce contracts . . . as is enjoyed by white citizens" 42 U.S.C. § 1981(a).

⁴ The PHRA states that it is an unlawful discriminatory practice "for any employer because of the race, color . . . [or] national origin . . . of any individual" to discharge that individual from employment. 43 P.S. § 955(a). The PHRA provides, in relevant part:

It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, . . . , or except where based upon applicable security regulations established by the United States or the Commonwealth of Pennsylvania: . . .

(a) For any employer because of the race, color, religious creed, ancestry, age, sex, national origin or non-job related handicap or disability of any individual to refuse to hire or employ, or to bar or to discharge from employment such individual, or to otherwise discriminate against such individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment, if the individual is the best able and most competent to perform the services required

(e) For any person, employer, employment agency, labor organization or employee, to aid, abet, incite, compel, or coerce the doing of any act declared by this section to be an unlawful discriminatory

Judgment as to Count III, Intentional Interference with Contractual Relations. In order to survive summary judgment as to Counts I and II, Plaintiff must make out a prima facie case of discriminatory termination by a preponderance of the evidence. McDonnell Douglas Corp. v. Green, 411 U.S. 792, 801-04 (1973). The prima facie elements of section 1981 and PHRA, as well as the burdens of proof, are the same as under Title VII. Jones v. School Dist. of Phila., 198 F.3d 403, 410 (3d Cir. 1999); Fullard v. Argus Research Laboratories, Inc., 2001 WL 632932, at *2 (E.D. Pa. June 6, 2001). Accordingly, both Plaintiff's section 1981 and PHRA claims will be examined together under the same Title VII analysis.

A. Burden-Shifting Analysis Under Section 1981 and PHRA

In order to sustain a discriminatory termination claim, Plaintiff may rely on either "direct evidence of racial discrimination" or "circumstantial evidence that would allow a reasonable fact finder to infer discrimination." Fullard, 2001 WL 632932, at *2. In deciding a claim for discriminatory termination under section 1981 and the PHRA that is not based on direct evidence, this Court must apply the burden-shifting analysis promulgated by the Supreme Court in McDonnell Douglas Corp. v. Green, 411 U.S. 792 (1973). As noted above, Plaintiff carries the

practice, or to obstruct or prevent any person from complying with the provisions of this act or any order issued thereunder, or to attempt, directly or indirectly, to commit any act declared by this section to be an unlawful discriminatory practice

43 P.S. § 955.

initial burden of establishing a prima facie case of unlawful discrimination. Id. at 802.

The establishment of a prima facie case creates a presumption that the employer unlawfully discriminated against the employee. Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S. 248, 254 (1981). To establish a prima facie case, Plaintiff must show that (1) he is a member of a protected class, (2) he was qualified for the position, (3) he suffered an adverse employment action, and (4) he was discharged under circumstances that give rise to an inference of unlawful discrimination. Burdine, 450 U.S. at 252-53; McDonnell Douglas, 411 U.S. at 780; Pivirotto v. Innovative Sys., Inc., 191 F.3d 344, 357 (3d Cir. 1999). Plaintiff is not, however, required to demonstrate that his position was filled by someone who is not a member of his protected class in order to meet this burden. See Pivirotto, 191 F.3d at 357. Once the plaintiff is able to show a prima facie case, the burden then shifts to the employer to articulate some "legitimate, nondiscriminatory reason for the employee's rejection." McDonnell Douglas, 411 U.S. at 802.

If the defendant states a legitimate, non-discriminatory reason for the adverse employment action, the employer satisfies its burden of production and the presumption of discrimination is eliminated. St. Mary's Honor Cntr. v. Hicks, 509 U.S. 502, 507-08 (1993). Plaintiff then must meet his burden of persuasion by proving that the Defendants' proffered reasons are merely a pretext

for racial discrimination. Fuentes, 32 F.3d at 764. To meet this burden of persuasion, the plaintiff must produce evidence, "direct or circumstantial, from which a fact finder could reasonably either (1) disbelieve the employer's articulated reasons; or (2) believe that an invidious discriminatory reason was more likely than not a motivating or determinative cause of the employer's actions." Id. "The ultimate burden of persuading the trier of fact that the defendant intentionally discriminated against the plaintiff remains at all times with the plaintiff." Burdine, 450 U.S. at 253.

B. Plaintiff's Prima Facie Case

Defendants do not dispute that Plaintiff is a member of a protected class, as he is an African-American. Moreover, Plaintiff clearly suffered an adverse employment action when HGO terminated his employment. However, Defendants contend that Plaintiff cannot establish a prima facie case of unlawful employment discrimination for two reasons. First, Defendants argue that Plaintiff cannot establish that he was qualified for HGO employment after he was banned from the Convention Center. See Def. HGO's Mem. of Law in Supp. of Mot. for Summ. J. at 6. Second, Defendants allege that Plaintiff cannot demonstrate that any HGO employee who is not a member of Plaintiff's protected class was retained after being banned from a facility. Id.

1. Plaintiff's Qualifications

Defendant HGO argues that, once PCCA barred Plaintiff

from the PCC, he could no longer perform his job. As such, HGO contends Plaintiff was no longer qualified for his position. See Def. HGO's Mem. of Law in Supp. of Mot. for Summ. J. at 7. Plaintiff counters that he remained qualified to work for HGO irrespective of the ban, and that, pursuant to HGO's policy and procedure manual, Plaintiff could have been offered "another similar position with HGO." Pl.'s Resp. to Def. HGO's Mot. for Summ. J. at 4-5.

In support of its argument, HGO relies on cases which analyze whether a plaintiff is a "qualified individual" within the meaning of the Americans with Disabilities Act ("ADA"). See Def. HGO's Mem. of Law in Supp. of Mot. for Summ. J. at 7 (citing Smith v. Davis, 248 F.3d 249, 251-52 (3d Cir. 2001); Waggoner v. Olin Corp., 169 F.3d 481, 483 (7th Cir. 1999); Gantt v. Wilson Sporting Goods Co., 143 F.3d 1042, 1047 (6th Cir. 1998); Tyndall v. Nat'l Educ. Ctrs., 31 F.3d 209, 213 (4th Cir. 1994)). In particular, these cases focus on plaintiffs with a history of absenteeism who are deemed unqualified to perform their jobs because they are unable to meet the attendance requirements. See e.g. Davis, 248 F.3d at 251-52; Tyndall, 31 F.3d at 213. Such cases are factually distinguishable from the case at bar. Here, HGO admits that Plaintiff "had worked at the PCC as an employee of HGO's predecessor for several years prior to becoming employed by HGO." Def. HGO's Mem. of Law in Supp. of Mot. for Summ. J. at 7. HGO

presents no evidence that either HGO or its predecessor complained of absenteeism, or any other disciplinary concerns, concerning Plaintiff prior his termination on October 12, 1998. Moreover, after the alleged incident which resulted in his termination, Plaintiff arrived for work at 6:30 a.m. as scheduled, and was told he was not permitted to work. See Laborers Local 332 & HGO Serv., Inc., Case No. 143000012099W, at 13 (October 26, 1999) (hereinafter "Local 332").

HGO relies on the recent Third Circuit case of Smith v. Davis for the proposition that "[a]n employee who does not come to work on a regular basis is not qualified." 248 F.3d at 252. However, the Third Circuit in Smith v. Davis reversed the district court's grant of summary judgment on plaintiffs ADA and Title VII claims. See id. at 251-52. The court found that the record raised an issue of fact as to whether plaintiff's termination was for a legitimate, nondiscriminatory reason or whether it was a pretext for discrimination. Id. The court explained that "[w]hen the summary judgment record is viewed in the light most favorable to Smith, we cannot say that a reasonable fact finder would have to conclude that Smith was unqualified due to excessive absenteeism." Id. Therefore, while the court agreed that absenteeism may have been what defendants had in mind when they terminated plaintiff, there existed a genuine issue as to whether this reason was legitimate or pretextual, particularly since there was evidence

that plaintiff performed his duties to the apparent satisfaction of his supervisors for over six years. Id.

Similarly, in the instant case, a genuine issue of material fact exists as to whether PCCA's actions of prohibiting Plaintiff from the PCC, and HGO's subsequent termination of Plaintiff, was pretextual or the result of Plaintiff's alleged conduct. This determination is bolstered by the fact that an arbitrator concluded that HGO's terminated Plaintiff without just cause. See Local 332, supra, at 17 (finding "[HGO] did not make the kind of effort to determine whether [Plaintiff] violated its rules or orders that the circumstances clearly called for," and that HGO's investigation into the matter "was neither conducted fairly or objectively . . ."). Therefore, viewing the facts in the light most favorable to the Plaintiff, the Court concludes that Defendants have failed to show an absence of a genuine issue of material fact as to whether Plaintiff was qualified for his job with HGO.

2. Retaining a Similarly Situated Employee Not Within Plaintiff's Protected Class

Defendants also argue that Plaintiff cannot make out a prima facie case because he cannot prove that an HGO employee who was not a member of Plaintiff's protected class was retained by HGO after being barred from the PCC. Plaintiff, however, correctly states that the appropriate fourth element of a prima facie case requires a showing that the wrongful discharge took place under circumstances that give rise to an inference of unlawful discrimination. Texas Dep't of Cmty. Affairs v. Burdine, 450 U.S.

248, 253, 101 S.Ct. 1089, 1094, 67 L.Ed.2d 207, 215 (1981). That formulation permits a plaintiff to satisfy the fourth element of the McDonnell Douglas test in a variety of ways. The retaining of someone not in the protected class is merely a circumstance that would give rise to an inference of unlawful discrimination. See Bullock v. Children's Hosp. of Phila., 71 F.Supp.2d 482, 487 (E.D. Pa. 1999).

While Plaintiff may establish a prima facie case by presenting evidence that an employee who is not a member of his protected class was retained, no such proof is required. See Pivirotto v. Innovative Sys., 191 F.3d 344, 355 (3d Cir. 1999) ("[I]t is inconsistent with Title VII to require a plaintiff to prove that she was replaced by someone outside her class in order to make out a prima facie case. We hold that it is error to require a plaintiff to do so . . ."). Accordingly, Plaintiff can make out a prima facie case even without demonstrating that employees outside of the protected class were treated more favorably, let alone that Plaintiff was replaced by someone outside of the protected class. See id. at 357; Bullock, 71 F.Supp.2d at 489. There is no rigid formulation of a prima facie case and the requirement may vary with "'differing factual situations.'" Matczak, 136 F.3d at 938 (quoting McDonnell Douglas, 411 U.S. at 802 n.13). The prima facie case requires "only 'evidence adequate to create an inference that an employment decision was based on an

illegal discriminatory criterion.'" Pivirotto, 191 F.3d at 356 (quoting O'Connor v. Consolidated Coin Caterers Corp., 517 U.S. 308, 312, 116 S.Ct. 1307, 1310, 134 L.Ed.2d 433 (1996)).

Accordingly, the fact that Plaintiff cannot establish that a white HGO employee retained his or her job after being banned from the PCC, or that he was replaced with an individual of a different race does not render his claim fatal. "When actually focusing on the prima facie case, . . . [the Third Circuit has] repeatedly emphasized that the requirements of the prima facie case are flexible, and in particular that 'the fourth element must be relaxed in certain circumstances.'" Pivirotto v. Innovative Sys., 191 F.3d 344, 356 (quoting Torre v. Casio, Inc., 42 F.3d 825, 831 (3d Cir. 1994)). The Court believes that this is one of those circumstances. While Plaintiff is unable to establish that a white worker was retained by HGO after being barred from the PCC, Plaintiff has established, through the review of an independent arbitrator, that his termination was suspect. The arbitrator explained that Plaintiff "was never given the opportunity to present his side of what happened on October 10 in the presence of his accusers" Local 332, supra, at 17. Moreover, the arbitrator concluded that the investigation that resulted in Plaintiff's termination "was neither conducted fairly or objectively, nor did [HGO] obtain substantial evidence that [Plaintiff], indeed, committed an offense that warranted discharge,

or if [Plaintiff] had committed any offense at all." Id. at 17-18.

"The burden of establishing a prima facie case of disparate treatment is not onerous." Burdine, 450 U.S. at 254. The Third Circuit has recognized that, in the absence of direct evidence, an employer's mental processes in a discrimination case "are uniquely difficult to prove and often depend upon circumstantial evidence." Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1071 (3d Cir. 1996). "The role of determining whether the inference of discrimination is warranted must remain within the province of the jury, because a finding of discrimination is at bottom a determination of intent." Id. Here, Plaintiff has established that a reasonable fact finder could determine that the circumstances surrounding Plaintiff's termination were suspect. Therefore, viewing the facts in the light most favorable to the Plaintiff, Defendants have failed to prove an absence of a material fact as to whether Plaintiff was discharged under circumstances that give rise to an inference of unlawful discrimination.

C. Defendants' Legitimate and Non-Discriminatory Reasons

Since Plaintiff has arguably made a prima facie case, the burden of production now shifts to the Defendants, who are required to articulate a legitimate, nondiscriminatory reason for Plaintiff's termination. See Burdine, 450 U.S. at 253-54. Once such a legitimate, nondiscriminatory reason is proffered, Plaintiff must point to evidence that discredits the claimed nondiscriminatory reason or that shows beyond a preponderance of the evidence that the employer's action had a discriminatory motivating cause. See Sheridan v. E.I. DuPont de Nemours & Co., 100 F.3d 1061, 1067 (3d Cir. 1996) (citing Fuentes v. Perskie, 32 F.3d 759, 764 (3d Cir. 1994)).

Here, HGO claims that it legitimately terminated

Plaintiff's employment because PCCA banned Plaintiff from the PCC. PCCA, in turn, alleges that it banned Plaintiff from the PCC because Plaintiff violated PCCA's and HGO's work rules. PCCA believes it "made a good faith, justifiable business recommendation to HGO based upon a comprehensive investigation and sound evaluation of the incident." See Def. PCCA's Mot. for Summ. J. at 10. According to PCCA, its reasons "for prohibiting [Plaintiff] from working on its premises are indisputably worthy of credence" Id. Again, the arbitrator's decision flatly contradicts PCCA's assertion.⁵ Contrary to PCCA's assertions, the arbitrator found that PCCA's decision to bar Plaintiff was, in fact, worthy of little credence because Plaintiff "was never given the opportunity to present his side of what happened on October 10 in the presence of his accusers" Local 332, supra, at 17. In addition, the arbitrator concluded that the investigation resulting in Plaintiff's termination "was neither conducted fairly or objectively, nor did [HGO] obtain substantial evidence that [Plaintiff], indeed, committed an offense that warranted discharge, or if [Plaintiff] had committed any offense at all." Id. at 17-18. From this evidence, a reasonable fact finder could conclude that

⁵ Plaintiff asks this Court give the arbitrator's decision res judicata or collateral estoppel effect. See Pl.'s Answer to Def. HGO Mot. for Summ. J. at 7-8. The Court declines to make such a finding. However, the Court notes that the arbitrator's decision is entitled to some weight in reviewing Defendants' Motions for Summary Judgment. See Stewart v. Rutgers, 120 F.3d 426, 433 (3d Cir. 1997) (reversing district court's grant of summary judgment claiming it was error for the district court to exclude the grievance committee's finding that a previous tenure of the plaintiff was "arbitrary and capricious").

Defendants' proffered legitimate reasons are not worthy of belief. Accordingly, the Court denies Defendant HGO's Motion for Summary Judgment as to Plaintiff's claims under both section 1981 and the PHRA (Counts I and II), and denies PCCA's Motion for Summary Judgment as to Plaintiff's PHRA claim (Count II).

D. Plaintiff's Section 1981 Claim as Applied to PCCA

PCCA argues that Plaintiff is unable to support a section 1981 claim against PCCA because there is no contractual relationship between PCCA and Plaintiff. In Plaintiff's Response to PCCA's Motion for Summary Judgment, Plaintiff concedes that he cannot in good faith oppose Defendants' Motion regarding the section 1981 claim. See Pl.'s Resp. to Def. PCCA's Mot. for Summ. J. at 2 n.1 ("Plaintiff concedes that in view of Patterson v. McClean Credit Union, 491 U.S. 164 (1989), and subsequent case[s] within this district[] limiting the scope of § 1981 to the making and enforcement of contracts, and the absence of direct contract between Plaintiff and Defendant PCCA, good faith opposition to Defendant's Motion concerning the § 1981 claim cannot be made.").

Accordingly, the Court grants Defendant PCCA summary judgment on Count I of Plaintiff's complaint.

E. Intentional Interference with Contractual Relations

Finally, PCCA seeks summary judgment on Count III of Plaintiff's complaint, Intentional Interference with Contractual

Relations. In order to maintain an action for intentional interference with contractual relations, Plaintiff must establish: (1) the existence of a contractual relation between Plaintiff and a third party, HGO; (2) purposeful action on the part of Defendant PCCA, specifically intended to harm the existing relation, or to prevent a prospective relation from occurring; (3) the absence of a privilege or justification on the part of the PCCA; and (4) the occasioning of actual legal damage as a result of the PCCA's conduct. See Crivelli v. GMC, 215 F.3d 386, 394 (3d Cir. 2000); Kachmar v. Sungard Data Sys., Inc., 109 F.3d 173, 184 (3d Cir. 1997) (citation omitted). "Pennsylvania has expressly adopted the Restatement (Second) of Torts, which states that a necessary element of this tort is improper conduct by the alleged tortfeasor . . ." Crivelli, 215 F.3d at 394.

Here, Plaintiff alleges that PCCA's conduct in barring him from the PCC interfered with Plaintiff's contractual employment relationship with HGO and caused him to be terminated. PCCA takes exception to Plaintiff's claim on two fronts. First, PCCA argues that Plaintiff "failed to identify with sufficient detail" the alleged contract between HGO and Plaintiff. See Def. PCCA's Mot. for Summ. J. at 12. Second, PCCA contends that Plaintiff cannot produce sufficient evidence to establish purposeful action on the part of PCCA specifically intended to harm the contractual relationship between HGO and Plaintiff. Id.

For Plaintiff's claim to succeed, there must have been a contractual, not simply an at-will, employment relationship between Plaintiff and his employer HGO. See Parvensky-Barwell v. County of Chester, 1999 WL 213371, at *8 (E.D. Pa. April 13, 1999). Plaintiff alleges the existence of a contractual relation between him and HGO based on a collective bargaining agreement. HGO has never contested that it shares a contractual relationship with Plaintiff. "[A]s a member of the HGO bargaining unit represented by Laborers Union, Local 332 ("Local 332"), all of plaintiff's terms and conditions of employment were governed by a collective bargaining agreement between Local 332 and HGO." Def. HGO's Answer and First Defense, at ¶ 25. Accordingly, the record contains evidence that Plaintiff's employment with HGO was governed by a contract.

Next PCCA alleges that, even if a contract exists between Plaintiff and HGO, Plaintiff cannot establish that PCCA's conduct amounts to intentional interference. Interference with contractual relation is privileged when the defendant believes in good faith that his legally protected interest may be harmed by the performance of the contract. Schulman v. J.P. Morgan Investment Mgmt., Inc., 35 F.3d 799, 810 (3d Cir. 1994) (citing Restatement (Second) of Torts § 733 (1979)). Similarly, the "intent to harm" element is lacking and a claim for tortious interference with contract cannot be maintained where the defendant acts upon a

reasonable good faith belief. See Peoples Mortgage Co. v. Fed. Nat'l Mortgage Assoc., 856 F. Supp. 910, 940-42 (E.D. Pa. 1994). The central inquiry in this evaluation is whether the interference is "sanctioned by the rules of the game which society has adopted [defining] socially acceptable conduct which the law regards as privileged." Advent Sys., 925 F.2d at 673 (quotation omitted).

Again, the findings of the arbitrator contradict PCCA's assertions. The arbitrator found that PCCA's decision to bar Plaintiff was, in fact, not in good faith. Local 332, supra, at 17. Specifically, the arbitrator concluded that the investigation resulting in Plaintiff's termination "was neither conducted fairly or objectively, nor did [HGO] obtain substantial evidence that [Plaintiff], indeed, committed an offense that warranted discharge, or if [Plaintiff] had committed any offense at all." Id. at 17-18. After reviewing the evidence contained in the record and considering the arguments of both parties, the Court determines that genuine issues of material fact exist with respect to PCCA's intent and lack of privilege. Accordingly, PCCA is not entitled to summary judgment on Count III of this claim.

IV. CONCLUSION

Having drawn all reasonable inferences in the light most favorable to Plaintiff, the Court declines to grant Defendant HGO summary judgment as to Plaintiff's section 1981 claim (Count I) and Plaintiff's claim under the PHRA (Count II). However, Defendant

PCCA is granted summary judgment as to Count I of Plaintiff's complaint which alleges a cause of action under section 1981 because no genuine issue of material fact exists upon which a reasonable jury could return a verdict for Plaintiff against PCCA on this claim. Nonetheless, Plaintiff continues to maintain a cause of action against PCCA as to his PHRA claim (Count II) and his claim for intention interference with contractual relations (Count III).

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM E. SINGLETON	:	CIVIL ACTION
	:	
v.	:	
	:	
HGO SERVICES, INC., <u>et. al.</u>	:	NO. 00-2414

O R D E R

AND NOW, this 15th day of November, 2001, upon consideration of Defendant HGO, Inc.'s Motion for Summary Judgment and accompanying Memorandum of Law (Docket No. 15), Plaintiff's Answer to Defendant HGO, Inc.'s Motion for Summary Judgment (Docket No. 18), HGO, Inc.'s Reply Memorandum of Law in Support of Its Motion for Summary Judgment (Docket No. 20), Defendant Pennsylvania Convention Center Authority's Motion for Summary Judgment and accompanying Memorandum of Law (Docket No. 16), and Plaintiff's Response to Defendant Pennsylvania Convention Center Authority's Motion for Summary Judgment (Docket No. 17), IT IS HEREBY ORDERED that:

- (1) Defendant HGO, Inc.'s Motion for Summary Judgment is **DENIED**;
- (2) Defendant Pennsylvania Convention Center Authority's Motion for Summary Judgment is **GRANTED IN PART; DENIED IN PART.**
 - (a) Count I of Plaintiff's complaint is **DISMISSED** as it pertains to Plaintiff PCCA.

(b) As to Count II of Plaintiff's complaint,
Defendant PCCA's Motion for Summary Judgment is
DENIED;

(c) As to Count III of Plaintiff's complaint,
Defendant PCCA's Motion for Summary Judgment is
DENIED.

BY THE COURT:

HERBERT J. HUTTON, J.